

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Qwest Corporation	)	
Petition for Permission to Withdraw ONA	)	WC Docket No. 02-355
Services	)	
	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** April 23, 2004

**Released:** April 23, 2004

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. This Memorandum Opinion and Order (Order) grants a request filed by Qwest Corporation (Qwest) on October 15, 2002, to withdraw two Open Network Architecture (ONA) services listed as Basic Service Arrangements (BSAs) in its ONA Users Guide and its Annual ONA Report, called Dataphone Select-a-Station and Digital Data Service 2-Wire (DDS2-Wire), and to discontinue the offering of a state-tariffed Complementary Network Service (CNS), called ScanAlert.<sup>1</sup> Qwest requests this relief because equipment necessary to provide these services is no longer available.<sup>2</sup>

2. In the *Computer III*<sup>3</sup> and *ONA*<sup>4</sup> proceedings, the Commission established a comprehensive regulatory framework – including requirements to maintain ONA and

<sup>1</sup> Qwest Corporation Petition for Permission to Withdraw ONA Services, WC Docket No. 02-255 (filed Oct. 15, 2002) (Qwest ONA Petition).

<sup>2</sup> Qwest ONA Petition at 2, 3, 5-6.

<sup>3</sup> *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Computer III)*, Report and Order, Phase I, 104 FCC 2d 958 (1986) (*Phase I Order*), recon., 2 FCC Rcd 3035 (1997) (*Phase I Recon. Order*), further recon., 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*), second further recon., 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order* and *Phase I Recon. Order* vacated, *California v. FCC*, 905 F.2d 1217 (9<sup>th</sup> Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), recon. 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), further recon., 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order* vacated, *California I*, 905 F.2d 1217 (9<sup>th</sup> Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), recon., 7 FCC Rcd 909 (1992), pets. for review denied, *California v. FCC*, 4 F.3d 1505 (9<sup>th</sup> Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), recon. dismissed in (continued....)

Comparatively Efficient Interconnection plans – to govern participation by Bell Operating Companies (BOCs) in the enhanced services marketplace.<sup>5</sup> The Commission required each BOC to file a plan describing the unbundled basic services it would provide as ONA services and the terms under which each service would be offered.<sup>6</sup> In order to modify approved ONA-related services, the Commission also required each BOC to first seek the approval of the Common Carrier Bureau (now Wireline Competition Bureau) by filing an amendment to its ONA plan at least 90 days in advance.<sup>7</sup>

3. Qwest filed its petition on October 15, 2002. On November 14, 2002, the Commission sought comment on the Qwest ONA petition,<sup>8</sup> and received none.<sup>9</sup> Qwest subsequently amended its petition to omit one service, Qwest IDSL.<sup>10</sup> Specifically, Qwest requests permission to withdraw two BSAs, Dataphone Select-a-Station and DDS2-Wire, as well

(Continued from previous page)

part, Order, 11 FCC Rcd 12513 (1996), *BOC Safeguards Order* vacated in part and remanded, *California v. FCC*, 39 F.3d 919 (9<sup>th</sup> Cir. 1994) (*California III*), cert. denied, 115 S.Ct. 1427 (1995); Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998) (*FNPRM*).

<sup>4</sup> *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988) (*BOC ONA Order*), recon., 5 FCC Rcd 3084 (1990) (*BOC ONA Recon. Order*); 5 FCC Rcd 3103 (1990) (*BOC ONA Amendment Order*), erratum, 5 FCC Rcd 4045 (1990), pets. for review denied, *California II*, 4 F.3d 1505 (9<sup>th</sup> Cir. 1993), recon., 8 FCC Rcd 97 (1993) (*BOC ONA Amendment Recon. Order*); 6 FCC Rcd 7646 (1991) (*BOC ONA Further Amendment Order*); 8 FCC Rcd 2606 (1993) (*BOC ONA Second Further Amendment*), pet. for review denied, *California II*, 4 F.3d 1505 (9<sup>th</sup> Cir. 1993); *FNPRM*, 13 FCC Rcd 6040 (1998).

<sup>5</sup> *See BOC ONA Amendment Recon. Order*, 6 FCC Rcd 7646 (1991). ONA requirements also govern GTE. *See Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, Memorandum Opinion and Order, 11 FCC Rcd 1388 (1995).

<sup>6</sup> *See Bell Atlantic Telephone Companies, Offer of Comparably Efficient Interconnection to Providers of Internet Access Services*, Order, 11 FCC Rcd 6919 (1996). In a series of orders between 1989 and 1992, the Commission approved the BOCs' ONA plans. *Id.*

<sup>7</sup> *Phase I Order*, 104 FCC 2d 958, 1068, paras. 221-222 (1986); *BOC ONA Amendment Recon. Order*, 6 FCC Rcd 7646, 7654, para. 13 (1991). *See Computer III Further Remand Proceedings: Bell Operating Company Provision of Advanced Service*, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995).

<sup>8</sup> *See Pleading Cycle Established for Comments on Qwest Petition to Withdraw ONA Services*, WC Docket No. 02-355, Public Notice, DA 02-3155 (rel. Nov. 14, 2002).

<sup>9</sup> Qwest also filed a section 63.71 application on January 13, 2004, seeking Commission approval to discontinue Dataphone Select-a-Station and DDS2-Wire services. The Commission released a public notice on January 15, 2004, seeking public comment on Qwest's section 63.71 application, and received no comments. *See Comments Invited on Application of Qwest Corporation to Discontinue Domestic Telecommunications Services*, WC Docket No. 04-9, Public Notice, DA 04-29. Qwest's section 63.71 application did not make reference to ScanAlert, which is not a federally-tariffed service. Under section 63.71(c) of the Commission's rules, 47 C.F.R. § 63.71(c), Qwest's section 63.71 Application was granted automatically as of March 15, 2004.

<sup>10</sup> *See Letter from Robert B. McKenna, Associate General Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission*, WC Docket No. 02-355 (filed Jan. 13, 2004).

as a single CNS, ScanAlert.<sup>11</sup> According to Qwest, Dataphone Select-a-Station is a private line transport data service designed for use by alarm service providers.<sup>12</sup> Qwest indicates, however, that the equipment necessary for Dataphone Select-a-Station is no longer available and Qwest has no customers for the service.<sup>13</sup> According to Qwest, two other services, Direct Current Channels and McCulloh Loops, are ready substitutes for Dataphone Select-a-Station.<sup>14</sup>

4. Qwest describes DDS2-Wire as a two-wire full duplex circuit, using a sB1Q protocol capable of transmitting digital data at 155 Kbps, offered on a point-to-point basis only.<sup>15</sup> According to Qwest, equipment is no longer available for this service either.<sup>16</sup> Qwest also indicates that, while no alternative 2-wire service exists, there has never been a customer for DDS2-Wire.<sup>17</sup>

5. Qwest indicates that ScanAlert provides spread spectrum connectivity to permit end users to send alarm signals to alarm companies.<sup>18</sup> Qwest maintains that ScanAlert is listed in Qwest's ONA tariffs in all states.<sup>19</sup> Qwest seeks to withdraw ScanAlert because the company that manufactures equipment for ScanAlert refuses to do so in a manner that complies with the Network Equipment-Building System environmental standards.<sup>20</sup> Qwest does have customers for ScanAlert, in Washington and Oregon, and Qwest indicates that Direct Current Channels and

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<sup>11</sup> We note that Qwest asserts that it does not require Commission permission to withdraw ScanAlert, because ScanAlert is not federally tariffed. *See* Letter from John W. Kure, Executive Director – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-355 (filed Apr. 9, 2003) (Qwest Apr. 9 *Ex Parte* Letter), Attach. at 1.

<sup>12</sup> Qwest ONA Petition at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2-3. Qwest indicates that customer costs for these substitute services are higher than for Dataphone Select-a-Station, but also notes that, while there are no customers for Dataphone Select-a-Station, there are customers for Direct Current Channels and McCulloh Loops. Qwest Apr. 9 *Ex Parte* Letter, Attach. 1 at 1-2.

<sup>15</sup> Qwest ONA Petition at 3.

<sup>16</sup> *Id.*

<sup>17</sup> Qwest Apr. 9 *Ex Parte* Letter, Attach. 1 at 1. Qwest suggests that DDS4-Wire would provide customers with similar functionality. *See Id.*

<sup>18</sup> Qwest ONA Petition at 5. Qwest indicates that customers do not use ScanAlert to connect to any Qwest-provided enhanced service. *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 5-6. It is our understanding that Network Equipment-Building System, or NEBS, consists of industry-generated standards designed to ensure the compatibility and safety of electronics equipment.

McCulloh Loops provide ready substitutes for ScanAlert.<sup>21</sup> Qwest also will “grandfather” any existing customers that decline to order these substitute services.<sup>22</sup>

## II. DISCUSSION

6. We grant Qwest’s petition and permit it to discontinue offering Dataphone Select-a-Station, DDS2-Wire, and ScanAlert. We find that the circumstances of this case justify Qwest’s requested relief. As mentioned above, decisions by its associated equipment manufacturers would appear to limit Qwest’s ability to offer these services. Given that Qwest has no customers for Dataphone Select-a-Station or DDS2-Wire, and that Qwest has indicated that suitable alternative services currently exist that would duplicate the functions of these services, we find that no customer harm would result from Qwest’s withdrawing these services from its ONA Plan. Although Qwest does have customers for its ScanAlert service, we note that these customers may choose to switch to alternative services or to remain with ScanAlert on a grandfathered basis. In this way, ScanAlert customers would be able to keep their current service, without any disruption. While we do not favor ONA amendments that remove previously-approved services,<sup>23</sup> we conclude that the facts of this case warrant granting Qwest’s petition.

## III. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 201, 202, 203, 205, 214, and 218 of the Communications Act of 1934, as amended, and sections 0.91, 0.291, 1.3, and 63.71 of the Commission’s rules, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 203, 205, 214, 218, and 47 C.F.R. §§ 0.91 0.291, 1.3, 63.71, Qwest’s petition for permission to withdraw ONA services Dataphone Select-a-Station, DDS2-Wire, and ScanAlert, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.  
Chief, Wireline Competition Bureau

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<sup>21</sup> Qwest ONA Petition at 5-6.

<sup>22</sup> *Id.* at 2; Qwest Apr. 9 *Ex Parte* Letter, Attach. 1 at 1.

<sup>23</sup> *See Amendments of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, Memorandum Opinion and Order, 7 FCC Rcd 811, para. 1 (1992).